

1 Title 5. EDUCATION

2 Division 1. State Department of Education

3 Chapter 3. Handicapped Children

4 Subchapter 1. Special Education

5 Article 7. Procedural Safeguards

6
7 *Add §§ 3088.1 and 3088.2 to read:*

8 **§ 3088.1. Sanctions: Withholding Funds to Enforce Special Education Compliance.**

9 (a) Prior to withholding funds pursuant to subdivision (a) of Education Code Section 56845,
10 the Superintendent shall provide a local education agency with a reasonable notice and an
11 opportunity for a hearing as follows:

12 (1) The department shall send the agency a written notice by certified mail:

13 (A) Stating the intent to withhold funds for noncompliance;

14 (B) Describing the nature of the noncompliance, and the specific corrective action (or
15 actions) that the agency must take by an exact date (or dates) to come into compliance;

16 (C) Summarizing efforts to verify that required corrective actions have not already been
17 taken by the agency;

18 (D) Specifying the approximate amount of funds to be withheld and the anticipated timing of
19 the withholding; and

20 (E) Advising the agency of the opportunity for a hearing prior to the withholding, and the
21 date by which the agency must deliver to the department in writing a request for a hearing, which
22 date may be no less than 20 calendar days after the notice is received by the agency.

23 (2) If an agency requests a hearing pursuant to subparagraph (E) of paragraph (1):

24 (A) The department shall schedule the hearing within 20 calendar days of the receipt of the
25 request and shall notify the agency of the time and place of the hearing;

26 (B) A hearing officer shall be assigned by the department to conduct the hearing;

27 (C) An audiotape of the hearing shall be made;

28 (D) The time allotted for the hearing shall be one hour;

29 (E) Technical rules of evidence shall not apply at the hearing, but relevant written evidence
30 or oral testimony may be submitted;

31 (F) Facts and arguments presented by the agency shall focus exclusively on what the agency
32 has done to correct the noncompliance and/or whether mitigating factors have prevented the

1 agency from initiating or completing corrective action(s).

2 (3) A hearing conducted pursuant to paragraph (2) shall not reopen any finding of
3 noncompliance or any corrective action that has been ordered. The hearing officer's purpose
4 shall be to determine whether the agency presents sufficient proof of corrective action (s) having
5 been taken or of the presence of mitigating factors to justify either no withholding of funds or a
6 modification of intended withholding of funds.

7 (b) If a hearing is held pursuant to subdivision (a), the hearing officer shall submit a
8 recommendation to the Superintendent within 20 calendar days of the hearing's conclusion.
9 Upon considering the hearing officer's recommendation, the Superintendent shall proceed with
10 the withholding of funds (pursuant to the notice of intent), modify the amount and/or timing of
11 the withholding of funds, or not withhold funds, and the affected local education agency shall be
12 notified accordingly by the department.

13 (c) If a hearing is not held pursuant to subdivision (a), the withholding of funds shall take
14 place pursuant to the written notice of intent delivered to the local education agency.

15 NOTE: Authority cited: Section 56100, Education Code. Reference: Section 56845, Education
16 Code.

17 **§ 3088.2. Enforcement and Withholding of Funds.**

18 (a) If funds are withheld from a local education agency pursuant to subdivision (a) of
19 Education Code Section 56845, the funds may subsequently be apportioned to the agency
20 pursuant to subdivision (b) of Education Code Section 56845 upon the submission to the
21 department of:

22 (a) A written request by the agency; and

23 (b) Evidence that the agency has met the condition for apportionment specified in
24 subdivision (b) of Education Code Section 56845.

25 NOTE: Authority cited: Section 56100, Education Code. Reference: Section 56845, Education
26 Code.